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Urgency in Expulsion Cases Before the UN-Committees; Non-Refoulement and Beyond?

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URGENCY

- when it comes to interim measures before the UN-Committees— upholding the non-refoulement principle seems to be quintessential.
- This is clearly the case with regard to the CAT; General Comment No. 4 is to provide guidance on the implementation of the obligation to not expel, return (refouler) or extradite in circumstances where an individual would be in danger of being subjected to torture or other ill-treatment (Article 3 Convention against Torture);
- and also with regard to the HRCtee, in General Comment No. 33: ‘failure to implement such interim or provision measures is incompatible with the obligation to respect in good faith the procedure of individual communication established under the Optional Protocol’

URGENCY AND NON-REFOULEMENT

- Example CAT
- Requests for interim measures are made when necessary to avoid irreparable damage to the victim or victims of an alleged violation of Article 3 of the Convention. CAT takes the view that the State party should comply with the Committee's request in good faith.
- Moreover, the Committee takes the position that non-compliance with its request for interim measures constitutes a breach of the treaty provision that provides for the Committee's consideration of individual complaints.

URGENCY LINKED TO NON-REFOULEMENT

The CEDAW, in the case of M.N.N. v Denmark, pursuant to Article 5(1) of the Optional Protocol and rule 63 of its rules of procedure, requested the State party to refrain from expelling the author to Uganda. (CEDAW, M.N.N. v Denmark, Decision, 15 July 2013, Comm No 33/2011, CEDAW/C/55/D/33/2011)

CEDAW responds to the State party's argument that, unlike other human rights treaties, the Convention does not deal, directly or indirectly, with removal to torture or other serious threats to the life and the security of a person (under 8.8). It recalls that in General Recommendation it also determined that such gender-based violence impaired or nullified the enjoyment by women of a number of human rights and fundamental freedoms, which included the right to life, the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, the right to liberty and security of the person and the right to equal protection under the law.

Urgency links to protection against refoulement...

REASONING URGENCY AND NON REFOULEMENT UN COMMITTEES INTO EU LAW

- Art. 52 EU Charter Scope and interpretation of rights and principles
2. Rights recognised by this Charter for which provision is made in the Treaties shall be exercised under the conditions and within the limits defined by those Treaties.
 3. In so far as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.
 5. The provisions of this Charter which contain principles may be implemented by legislative and executive acts taken by institutions, bodies, offices and agencies of the Union, and by acts of Member States when they are implementing Union law, in the exercise of their respective powers. They shall be judicially cognisable only in the interpretation of such acts and in the ruling on their legality.
 7. The explanations drawn up as a way of providing guidance in the interpretation of this Charter shall be given due regard by the courts of the Union and of the Member States.

REASONING URGENCY UN COMMITTEES INTO EU LAW

- Art. 24 EU Charter The rights of the child

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

Explanations to the Charter: This Article is based on the New York Convention on the Rights of the Child signed on 20 November 1989 and ratified by all the Member States, particularly Articles 3, 9, 12 and 13 thereof.

URGENCY BEYOND NON-REFOULEMENT?: ART. 3-12 CRC CRC/C/85/D/56/2018

- CRC/C/85/D/56/2018 28 September 2020
- Explaining the context

URGENCY: FROM ART. 3-12 CRC TO ART. 17 DUBLIN III EG CRC/C/85/D/56/2018

9. Consequently, the State party is under an obligation to reconsider the author's request to apply article 17 of the Dublin III Regulation in order to process E.A. and U.A.'s asylum application as a matter of urgency, ensuring that the best interests of the children are a primary consideration and that E.A. and U.A. are heard. In considering the best interests of the children, the State party should take account of the social ties that have been forged by E.A. and U.A. in Ticino since their arrival and the possible trauma they have experienced due to the multiple changes in their environment, in Azerbaijan and in Switzerland. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future. In this regard, the Committee recommends that the State party ensure that children are systematically heard in the context of asylum procedures and that national protocols applicable to the return of children are in line with the Convention.